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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 908

MARIO MERCADO RIERA, EXECUTOR, ET AL., *Petitioners*,

v.

MARIA LUISA MERCADO RIERA DE BELAVAL, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, AND SUPPORTING BRIEF.

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CHRONOLOGY.

	Date	Case No.	Incident
1.	Aug. 22, 1937	....	Don Mario Mercado Montalvo, widower, died at Guayanilla, Puerto Rico, leaving as his sole direct heirs, his four adult children, namely, Don Mario Mercado Riera, Doña Margarita Mercado Riera de Mandry, Doña Maria Luisa Mercado Riera de Belaval, and Don Adrian Mercado Riera (R. 498-503).

District Court of Ponce.

2.	Aug. 28, 1937	764	Holographic will presented for probate (R. 498-503).
3.	Aug. 30, 1937	764	Will opened, read in open court before the heirs present, and admitted to probate (R. 508-523).
4.	Aug. 31, 1937	....	Don Mario Mercado Riera formally accepted executorship and took oath of office (R. 193-195).
5.	Sept. 1, 1937	782	Petition filed by Don Mario Mercado Riera for letters testamentary, and letters issued (R. 191-197).
6.	Sept. 8, 1937	802	Pedro M. Porrata granted judicial credentials as "Auditor-Partitioner" of the estate (R. 793-794).
7.	Sept. 10, 1937	782	Executor granted 90 days extension of time to make inventory (R. 199).
8.	Dec. 6, 1937	782	Executor granted further extension of time to March 10, 1938, to file inventory (R. 201-202).
9.	Dec. 7, 1937	782	Executor filed first quarterly account, under Sec. 587, Code of C. P. (Sec. 54, Act of 1905 Relating to Special Legal Proceedings) (R. 205).
10.	Dec. 15, 1937	782	Executor filed motion to fix term within which to file objections to quarterly account (R. 205-206).
11.	Dec. 15, 1937	782	Doña Margarita appeared personally, joining with her brother, Don Mario, in signing and filing a personal undertaking to make restitution of certain items of expenditure shown on the executor's quarterly accounts, should the items be disallowed (R. 207-208).

	Date	Case No.	Incident
12.	Dec. 20, 1937	782	Court denied motion (No. 10 above), citing Secs. 587, 588, 589 and 590, Code of C. P. (Secs. 54, 55, 56 and 57, Special Proceedings Act) (R. 208).
13.	Jan. 24, 1938	1213	Don Adrian Mercado Riera appeared personally and by his attorneys, Jose A. Poventud and Alberto S. Poventud, by petition praying that he be adjudged to be an acceptor "with benefit of inventory", and that executor be required to make a judicial inventory (R. 774-781).
14.	Jan. 24, 1938	1213	Court granted petition of Don Adrian (No. 13 above) (R. 782-785).
15.	Jan. 26, 1938	1213	Pedro M. Porrata, testimentary auditor-partitioner, was granted leave to intervene as a party in interest (R. 796).
16.	Feb. 10, 1938	1213	Pedro M. Porrata filed motion praying that the order of Jan. 24, 1938, requiring the executor to make inventory, be rescinded, and that the testimentary partitioner be ordered to make the required inventory (R. 797-800).
17.	Feb. 11, 1938	782	Doña Maria Luisa Mercado Riera de Belaval appeared by her attorneys, Celestino Iriarte, F. Fernandez Cuyar, and H. Gonzalez Blanes, by filing motion that court deny further extensions of time to executor to file inventory (R. 209-210).
18.	Feb. 18, 1938	1213	Don Mario, as executor, appeared by his attorneys, moving that the various pending motions be set for hearing (R. 802-806).
19.	Feb. 21, 1938	782	Pedro M. Porrata, as testamentary partitioner, filed motion for leave to intervene (R. 211-212).
20.	Mar. 2, 1938	1213	Court denied Mr. Porrata's motion (No. 16 above), reserving his powers and rights as testamentary partitioner (R. 811-812).
21.	Mar. 9, 1938	782	Court denied Mr. Porrata's motion (No. 19 above) for leave to intervene (R. 218-219).

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	Date	Case No.	Incident
22.	Mar. 8, 1938	1134	Court issued writ of certiorari, on the petition of Mr. Porrata, to review the district court order of Mar. 2, 1938 (No. 20 above), denying Porrata's motion of Feb. 10, 1938 (No. 16 above) (R. 863).
23.	Apr. 29, 1938	1134	Court annulled writ (No. 22, above) and remanded case to district court for further proceedings, and for fixing a new term for compliance by executor with district court order of Jan. 24, 1938 (No. 14 above) (R. 856-863). See also *Porrata* v. *District Court*, 53 P. R. R. 140.

District Court of Ponce.

24.	May 11, 1938	1213	Mandate from insular supreme court on its judgment (No. 23 above) received (R. 855).
25.	Aug. 19, 1938	802	Partitioner's time to make partition extended to Sept. 6, 1939 (R. 570-571).
26.	Sept. 9, 1938	....	Contract of Compromise, with inventory of estate, agreed upon, signed, and notarized by the heirs, their respective wives and husbands and Mr. Porrata; providing, *inter alia*, in paragraphs (l) and (m) (R. 544-545), for latter's preparation of his report as partitioner within ten days from payment of the inheritance tax on the estate, and for execution of the report or deed of partition by him and by all of the four heirs (Exhibit 6, R. 524-558).
27.	Sept. 12, 1938	1213	Executor filed inventory (same as that attached to contract No. 26 above), same was approved, and the "acceptance-of-inheritance" proceedings terminated, by order of the court (R. 891-892).
28.	Mar. 6, 1940	....	Executor submitted to heirs for their approval, final accounts as of March 4, 1940; the items clearly showing that he had continued always up to that time to exercise the functions of a general administrator, collecting rents and debts due the estate, paying legacies and other obligations of the estate, compromising tax claims of the Insular, Federal and New York State governments, and generally managing the properties and affairs of the estate (R. 234-242).

	Date	Case No.	Incident
29.	Mar. 9, 1940	....	Treasurer of Puerto Rico delivered to executor receipt for $155,878.50, insular inheritance taxes and interest (R. 583-584).
30.	Mar. 14, 1940	....	Mr. Porrata transmitted copies of his proposed report or deed of partition to the heirs for examination in preparation for a meeting to be held on March 16, 1940, to reconcile any differences (R. 597-602). The text of the report or deed appears in the record on pages 607 to 770.
31.	Mar. 16, 1940	....	Don Adrian and Doña Maria Luisa wrote Mr. Porrata, declining to attend conference and stating numerous objections to the draft of report or deed of partition (R. 598-602).
32.	Mar. 16, 1940	782	Don Adrian and Doña Maria Luisa, in person, and by attorneys Jose A. Poventud and Celestino Iriarte, filed list of 16 objections to specific items of the executor's final account without, however, making any objection to his having continued to act as administrator of the estate (R. 225-233).
33.	June 7, 1940	782	Don Adrian and Doña Maria Luisa filed supplemental list of 6 specific objections to final accounts, again omitting any objection to executor's continuing to administer the estate (R. 242-244).
33a.	Aug. 27, 1940	782	Don Adrian and Doña Maria Luisa filed motion to set for hearing their objections to final account (R. 245-247).
34.	Nov. 12, 1940 to May 27, 1941	782	Hearings on objections to final accounts held before Judge Sepulveda on 31 days throughout this period, Don Adrian and Doña Maria Luisa being represented throughout by their respective attorneys, Jose A. Poventud and Celestino Iriarte (R. 287-348).
35.	Oct. 27, 1941	782	Don Adrian and Doña Maria Luisa, by their attorneys, Messrs. Iriarte and Poventud, filed a petition to direct the executor to deliver the properties to heirs immediately and render supplementary final accounts, but without any contention that the term of the executor had expired two years before (R. 348-359).
36.	Nov. 17, 1941	782	Executor filed answer to petition (No. 35 above) for immediate delivery of properties, praying court decide matters as soon as possible (R. 363-364).

	Date	Case No.	Incident
37.	Nov. 18, 1941	782	Attorneys Zapater and Ochoteco filed motion to fix their fees for services as attorneys for the executor from Aug. 31, 1937 to Oct. 27, 1941 (R. 366-375), with proof of personal service on Mr. Poventud, attorney for Doña Maria Luisa, and Mr. Iriarte, attorney for Don Adrian.
38.	Nov. 21, 1941	782	Don Mario, as executor, filed motion for orders directing clerk of court to remit to executor deposit of $5,176.10 belonging to estate, to authorize executor to cash check for $3,125 drawn to order of testator, and to authorize sale of certain personal property of estate, all in order to provide funds needed to pay legacies (R. 377-379).
39.	Nov. 26, 1941	782	Don Adrian and Doña Maria Luisa, appearing specially, through attorneys Poventud and Iriarte, filed a motion to quash service on them of motion (No. 37 above) to fix attorneys fees, alleging for the first time that the executorship of Don Mario had expired in September, 1939 (R. 380-381).
39*a*.	Nov. 26, 1941	782	Pedro M. Porrata filed (R. 474) his special "Report of the Testamentary Partitioner" (R. 385-395), with copy of his partition report or deed attached as an exhibit (R. 393), and prayed for hearing thereon.
39*b*.	Dec. 4, 1941	782	Doña Maria Luisa and Don Adrian filed special appearance and motion (R. 396-397) to quash service on them through their attorneys of Mr. Porrata's special report (No. 39*a* above).
40.	Feb. 19, 1942	782	Judge Sepulveda on basis of hearings mentioned in No. 34 above, filed opinion and final order modifying executor's final accounts, and approving same as modified (R. 397-430).
41.	Mar. 2, 1942	782	Executor filed notice of appeal to insular supreme court from Judge Sepulveda's order of Feb. 19, 1942 (No. 40 above) (R. 432).
42.	Mar. 2, 1942	782	Don Adrian and Doña Maria Luisa filed notice of appeal to insular Supreme Court from Judge Sepulveda's order of Feb. 19, 1942 (No. 40 above) (R. 437).
43.	June 3, 1942	782	Executor filed petition that court expedite decision on petition of heirs for immediate delivery of properties, and other pending motions (R. 445-448).

Chronology Continued.

	Date	Case No.	Incident
44.	July 29, 1942	782	Executor filed notice of his request that pending motions be included in motion calendar for Aug. 3, 1942 (R. 449-450).
45.	Aug. 10, 1942	782	Executor filed report or argument again praying that court decide the pending motions (R. 452-457).
46.	Dec. 7, 1942	782	Executor filed notice of request that all pending motions be included on calendar for Dec. 14, 1942 (R. 458-459).
47.	Dec. 14, 1942	782	Don Adrian and Doña Maria Luisa, appearing specially, filed motion through their attorneys Iriarte and Poventud to quash service on them of executor's motion *re* funds to pay legacies (No. 38 above) (R. 461-462).
48.	Dec. 14, 1942	782	The pending motions were argued before Judge Gadea Picó, and submitted (R. 462-464).
49.	Mar. 23, 1943	782	Judge Gadea Picó denied motion of Don Adrian and Doña Maria Luisa to quash service of motion to fix attorneys' fees (No. 39 above) (R. 465-466).
50.	Mar. 24, 1943	782	Judge Gadea Picó denied motion of Don Adrian and Doña Maria Luisa (No. 35 above) for delivery of properties; reserving judgment on Porrata's special report (No. 39*a* above) and the objecting heirs' motion to quash service thereof (No. 39*b* above), pending hearing thereon (R. 467-476).
51.	Mar. 24, 1943	782	Judge Gadea Picó denied motion of Don Adrian and Doña Maria Luisa (No. 47 above) to quash service of executor's motion (No. 38 above) *re* funds to pay legacies (R. 476-478).
52.	Apr. 2, 1943	782	Don Adrian and Doña Maria Luisa filed notice of appeal to insular Supreme Court from Judge Gadea Picó's order (No. 50 above) denying motion for immediate delivery of properties (R. 491).

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53.	Apr. 1, 1943	1516	Don Adrian and Doña Maria Luisa filed petition for certiorari to review Judge Gadea Picó's order (No. 49 above) denying motion to quash service of motion to fix attorneys' fees (R. 1-12); and

	Date	Case No.	Incident
		1517	Petition for certiorari to review Judge Gadea Picó's order (No. 50 above) denying motion for immediate delivery of properties to heirs (R. 40-58); and
		1518	Petition for certiorari to review Judge Gadea Picó's order (No. 51 above) denying motion to quash service of executor's motion re funds to pay legacies (R. 165-176).
54.	Apr. 2, 1943	1516 1517 1518	Court ordered issuance of writs (R. 12, 59, 176).
55.	Apr. 3, 1943	1516 1517 1518	Writs issued (R. 13, 60, 177).
56.	May 24, 1943	1516 1517 1518	Don Mario, as executor, intervened by motions to quash the writs (R. 17, 65, 179-180).
57.	May 24, 1943	1517	Pedro M. Porrata, testamentary partitioner, intervened by filing a special appearance with a copy of special report previously rendered by him to the district court in Case No. 782, showing why the partitioning of the estate had not been completed; and also filed a detailed answer to the petition for certiorari, praying that the writ be quashed (R. 67-96).
58.	May 24, 1943	1516 1517 1518	Cases argued and submitted by attorneys representing the petitioners, the executors and the partitioner (R. 23, 96, 181).
59.	July 14, 1943	1516 1517 1518	Court rendered opinion and judgments, reversing district court in each case, vacating the three orders under review, and in 1517 substituting an order directing the executor to proceed immediately to deliver the properties to the heirs and to render supplementary account (R. 24, 97-121, 181-182).
60.	July 28, 1943	1516 1517 1518	Don Mario filed notice of appeal to U. S. Circuit Court of Appeals in each case (R. 24, 123, 182).
61.	July 28, 1943	1517	Pedro M. Porrata filed notice of appeal to U. S. Circuit Court of Appeals in this case (R. 126).
62.	July 31, 1943	1516 1517 1518	Insular supreme court rendered supplemental opinion modifying opinion (No. 59 above), on motion of Judge Gadea Picó, as to time taken by latter to decide motions (R. 31-33).

	Date	Case No.	Incident
63.	Aug. 7, 1943	....	Don Mario relinquished the executorship, custody and administration of the estate to the heirs, stating expressly, however, that he took this action "without prejudice to the appeal filed by the executorship from the judgment of the Supreme Court of Puerto Rico of the 14th of July, 1943, in cases numbers 1516, 1517 and 1518" * * * "and in order not to take any action whatsoever concerning the properties during the appeal, and, of course, only under the compulsion of said judgment" (R. 155, 156-157).

Supreme Court of the United States

OCTOBER TERM, 1945.

No. .....

MARIO MERCADO RIERA, EXECUTOR, ET AL., *Petitioners,*

v.

MARIA LUISA MERCADO RIERA DE BELAVAL, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners Mario Mercado Riera, Testamentary Executor, and Pedro M. Porrata, Testamentary Partitioner, of the estate of Mario Mercado Montalvo, Deceased, pray issuance by this court of a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the First Circuit, entered in this cause (comprising four separate appeals consolidated for hearing in that court) on November 23, 1945, affirming judgments of the Supreme Court of Puerto Rico rendered July 14, 1943, upon certiorari to the District Court of Ponce, vacating certain inter-

locutory orders of the latter court in a testamentary proceeding there called Civil Action No. 782, and in effect summarily terminating that proceeding by an order requiring the executor to proceed immediately to deliver the assets of the estate and render final accounts to the heirs, without completing payments of legacies, debts or expenses of administration; without first accomplishing or permitting partition of the residuary estate as required both by the will and a formal written contract between the heirs, the executor and the partitioner; without judicial sanction or approval of the settlement and distribution of the estate; and without judicial discharge of the executor.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED.*

The contentions of the respondents, who comprise two of the four heirs, and the grounds upon which the insular supreme court based the judgments affirmed by the court next below, are briefly, in substance, that:

(1) The proceedings in the district court never amounted to a judicial administration of the estate;

(2) For that reason the executor's term of office and powers as such were governed exclusively by the old Spanish Civil Law provisions of the Puerto Rican Civil Code, under which a testamentary executor has only two years at most to discharge his functions, unless expressly given a specific longer time by the will or by unanimous consent of the heirs and legatees;

(3) Accordingly, as the testator in this case had prescribed in his will only that the executor's statutory term was extended "to all the time that may be necessary for the execution" of the trust, without more definitely specifying the length of the extension, there having been no ex-

* A more comprehensive statement is in the Supporting Brief (*infra*, pp. 12-20).

press written consent of the heirs and legatees to any extension, and the executor having qualified as such on September 1, 1937, his term had automatically expired two years later on September 2, 1939;

(4) For similar reasons the term of office of the testamentary partitioner had likewise expired with that of the executor;

(5) Thereupon the custody of the properties of the estate and any then uncompleted duties of both the executor and the partitioner had legally devolved automatically upon the heirs jointly; and

(6) The district court had exceeded its lawful jurisdiction in continuing after that time to treat the estate as under judicial administration, and was without jurisdiction to make the interlocutory orders in question.

On the other hand, the petitioners contend, in substance, briefly, that:

(1) The insular supreme court was without legal power to grant certiorari to review the interlocutory orders in question, or to vacate them; this by reason of the limitations imposed upon the jurisdiction of that court by section 40 of the federal Organic Act for Puerto Rico;

(2) Under the same federal statute, the insular supreme court was even more clearly without jurisdiction to substitute, for one of the vacated interlocutory orders, its own order directing the executor immediately to deliver the estate to the heirs jointly;

(3) The substituted order violates fundamental federal constitutional and statutory rights of Pedro M. Porrata, personally and as the testamentary partitioner, under the due-process and equal-protection clauses of the Constitution and the Organic Act, by passing upon and adversely adjudicating his status, rights and duties under the will and

a written contract, in a proceeding in which he had been accorded no hearing in the district court;

(4) As a matter of purely local law, the executorship, partitionership and administration of this estate, were under the supervision of the district court from the beginning, or soon became so, and continued always thereafter to be so, by operation of law as well as the tacit consent and the acts of all concerned, including particularly these respondents, and the judgments of the insular supreme court are clearly, patently and inescapably erroneous for that reason as well as the others hereinabove indicated; and

(5) For like reasons, the United States Circuit Court of Appeals erred in affirming the judgments of the insular supreme court.

JURISDICTION OF THIS COURT.

This being a civil cause in a circuit court of appeals, it falls squarely within the plain terms of section 240(a) of the Judicial Code, as amended by section 1 of the Act of February 13, 1925 (43 Stat. 938), conferring jurisdiction upon the Supreme Court of the United States to require by certiorari that any such cause be certified to the Supreme Court for determination. As above stated, the judgment of the Circuit Court of Appeals, review of which is hereby sought by these petitioners, was entered November 23, 1945 (R. 932-933).

A petition for rehearing, duly interposed by these petitioners in that court, was denied January 3, 1946 (R. 933), and the three months period allowed by section 8a of the act last above mentioned, for filing this petition, expires April 3, 1946.

THE QUESTIONS PRESENTED.

Federal.

1. Did the insular supreme court have jurisdiction on certiorari to review any of the district court orders which it undertook to review and vacate in these cases, considering the limitations imposed upon the jurisdiction of that court by section 40 of the federal Organic Act for Puerto Rico, approved March 2, 1917 (39 Stat. 965)? See Supporting Brief, Point I (infra, pp. 22-23).

2. If so, did that court have jurisdiction on certiorari not only to vacate the district court orders in question, but to go further and substitute for one of those orders the other and different affirmative order in question, in view of the same federal statutory limitations? See Supporting Brief, Point II (infra, pp. 33-39).

3. With regard to the Petitioner Porrata, personally and as testamentary partitioner, does not the judgment of the insular supreme court in Case No. 1517, considered in connection with the findings and conclusions set forth in its supporting opinion, violate the due process and equal protection clauses of the Fifth Amendment to the Constitution and the Organic Act for Puerto Rico, approved March 2, 1917, by adjudging Porrata guilty of neglect to perform his official duties as testamentary partitioner and by declaring his office as such terminated, in a proceeding in which he had not been accorded notice or hearing in the district court? See Supporting Brief, Point III (infra, pp. 39-61).

Local.

4. As a matter of purely local law, did not the insular supreme court err patently and inescapably in its holdings that there was no judicial administration of the estate, that the executorship and partitionership automatically expired in 1939, and that the district court had no jurisdiction to make the interlocutory orders in question, as well as in each

of the three judgments based on those holdings, review of the affirmance of which by the Circuit Court of Appeals is hereby sought? See Supporting Brief, Point IV (infra, pp. 62-76).

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

Each of the three manifestly important federal questions presented here is one which petitioners believe has not been and should be settled by this court. In its affirmative answers to the first two of these questions, and its negative answer to the third, petitioners believe the court next below has decided federal questions in a way probably in conflict with applicable decisions of this court.

The Government and People of Puerto Rico, as well as these petitioners, have at least a strong moral right, now that the questions have been squarely presented in this case, to be told by the highest judicial tribunal of the nation, whether the insular supreme court is permitted by the federal Organic Act provisions defining its powers, to call up for review by certiorari district court interlocutory orders of the nature of those vacated in these cases; and if so, whether that court is likewise authorized in any such case, despite the same federal statutory limitations, not merely to vacate the order reviewed, but to substitute its own order, directing disposal of the testamentary estate, in lieu of that vacated, while holding in effect that the district court had no jurisdiction even to entertain the motion on which the vacated order was based.

All concerned need very much to know upon the highest possible authority, whether under existing federal laws, the insular supreme court, through certiorari to a district court, can itself derive jurisdiction over a testamentary estate, sufficient to enable it to give orders as to the custody and administration of the assets, while at the same time holding the district court from which the case came devoid of any such jurisdiction.

Petitioners believe also that in affirming the insular supreme court's judgments in Case No. 1517 (summarily terminating judicial administration of the estate, and requiring the executor immediately to surrender custody of its assets and his unfinished administrative functions to the heirs jointly), the Circuit Court of Appeals has not only decided a federal question in a way probably in conflict with applicable decisions of this court, but has also sanctioned such wide departures by the insular supreme court from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

The federal question to which we refer in the last preceding paragraph is the third of those briefly set forth above under "The Questions Presented" (*supra*, p. 5). It may be stated even more succinctly as follows: Can the insular supreme court, on certiorari to an insular district court, pass judgment against a party who has not been accorded notice, hearing and due process in the district court?

The Circuit Court of Appeals avoids this question, taking the view that the judgment of the insular supreme court does not bind Porrata, and that the parts of the insular supreme court's opinion relating to Porrata's rights, duties and obligations as testamentary partitioner, comprise *obiter dicta* (Op. C.C.A., R. 932). We think that view clearly erroneous; firstly, because Porrata's rights, duties and obligations as testamentary partitioner and personally, under the will and the contract of compromise, are inextricably bound up with those of the testamentary executor; secondly, because the mandatory judgment of the insular supreme court ordering the executor immediately to deliver the assets of the estate and surrender his remaining functions to the heirs jointly without accomplishment of the partition required by the will and the contract between the parties necessarily affects adversely substantial rights of Porrata; and thirdly, because the declarations of the

opinion amount to findings of fact and conclusions of law adverse to Porrata, which are in effect embodied in the judgment by its initial phrase: "For the reasons set forth in the foregoing opinion." (R. 121).

In any event, it is apparent that the affirmance of the judgment of the insular supreme court, if left undisturbed by this court, will leave the insular court very definitely committed to findings and conclusions damaging to the interests of Porrata, and which, although rendered without due process as to Porrata, will practically bar vindication of his rights, at least without another long and expensive course of litigation.

There remains, as a further reason for allowance of the writ prayed, the patent and inescapable nature of the error of local law involved in the judgments of the insular supreme court under consideration, and in the corresponding affirmatory judgment of the Circuit Court of Appeals. In its commendable desire to expedite the settlement of the Mercado estate, but unfortunately without due regard to statutory limitations upon its own powers, or the facts and circumstances of the case, the insular supreme court granted certiorari to the dissident heirs (respondents here); unjustly blamed the executor and partitioner for delays due in large part to the recalcitrant attitude and obstructive tactics of the respondents; in violation of applicable local statutes arbitrarily terminated the orderly judicial administration of the estate which had been in progress for several years with the tacit consent and recognition of the district court and all persons concerned; directed immediate transfer of the property of the estate and its further administration to the four heirs jointly; and, as the event now demonstrates, delayed indefinitely the ultimate lawful settlement and distribution of the estate.

The basic ostensible ground for this radical action was that there had never been any express or formal application for a judicial administration of the estate, as provided by

Puerto Rican law, and accordingly that no such administration had ever existed.

Brushing aside the facts that such an administration had actually been in progress for years, during which the district court, the executor, and all of the heirs had consistently regarded and treated the administration of the estate as judicial, and all had, in the original testamentary proceedings, repeatedly recognized and invoked the jurisdiction of the district court in estate matters; ignoring provisions of Puerto Rican law expressly requiring the judicial administration of testamentary estates in like circumstances; and adopting as its dominant criterion a mere technical matter of statutory form (the directory provision that judicial administrations of testamentary estates may be initiated by formal and specific applications), the insular supreme court abruptly took the administration and distribution of the estate out of the hands of the executor and partitioner designated by the testator, and out of the control and supervision of the district court, and handed it over to the joint care and custody of four heirs, already long seriously divided and unable to agree among themselves.

Accordingly petitioners urge that, even as a matter of purely local law, the judgments of the insular supreme court in these cases are patently and inescapably erroneous, and that the affirmance thereof by the Circuit Court of Appeals involves an unwarranted and improper extension of the rule of deference to decisions of the insular supreme court in matters of local law, as restated and clarified by this court in *De Castro* v. *Board of Com'rs*, 322 U. S. 451, thus calling for review and correction by this court upon that ground, in addition to the other grounds hereinabove indicated.

CONCLUSION.

For the reasons briefly outlined above, and more fully stated and discussed in the appended supporting brief, it is respectfully requested that this petition for a writ of certiorari be granted.

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